Ong Siew Giek @ Cheh Siew Giek v International Footwear (PG) Sdn Bhd

HIGH COURT (PULAU PINANG) — CIVIL APPEAL NO 16–8 OF 2002
KAMALANATHAN RATNAM J
1 SEPTEMBER 2004

Labour Law — Employment — Terms and conditions of service — Senior production supervisor performed other duties unrelated to supervisory function — Whether duties encompass supervising and overseeing performance of other employees engaged in manual labour throughout duration of work — Termination benefits — Claim for — Employment Act 1955 s 2(1) para 2(1), (3) of First Schedule

The complainant, previously employed by the employer defendant as a senior production supervisor claimed against the defendant for termination benefits. The labour court dismissed the complainant's claim on the basis that she was not a manual worker as defined under the Employment Act 1955 ('the Act'), the reason being the complainant was not supervising and overseeing other employees engaged in manual labour 'throughout the performance of their work' as required under para 2(1) of the First Schedule to the Act, in that she had an assistant and line leaders under her, and she performed other duties unrelated to supervision. The complainant appealed.

Held, allowing the appeal with costs:

(1) So long as the supervisor takes responsibility for the act of his assistant supervisors down the line and so long as he performs for the benefit of the workers, he must fall within para 2(3) of the Act. The words 'in and throughout the performance of their work' cannot be restricted to refer only to work performance (see para 15).

(2) Duties such as approving leave applications and attending meetings did not mean that he had no supervision over the workers as he was effectively the person over all in charge (see para 16).

(3) Since the company itself had approved and allowed the complainant to do other related work for its own benefit, and knowing that there were assistant supervisors down the line, it was unacceptable for the respondent company to deny that the complainant fell within s 2(3) to the First Schedule to the Act (see para 17).

[**Bahasa Malaysia summary**

Pengadu, yang dahulunya bekerja dengan majikan/defendan sebagai penyelia kanan pengeluaran menuntut dari majikan/defendan faedah-faedah penamatan. Mahkamah buruh menolak tuntutan pengadu atas alasan yang beliau bukanlah

A seorang pekerja manual sebagaimana yang ditafsirkan di bawah Akta Kerja 1955 ('Akta tersebut') kerana pengadu tidak menyelia dan mengawas pekerja-pekerja lain yang membuat kerja manual sepanjang pelaksanaan tugasan mereka sebagaimana yang diperlukan di bawah perenggan 2(1) kepada Jadual Pertama Akta tersebut, dalam mana beliau mempunyai seorang pembantu dan
B ketua kumpulan di bawahnya, dan beliau melaksanakan tugasan-tugasan lain yang tidak berkait dengan penyeliaan. Pengadu merayu.

Diputuskan membenarkan rayuan dengan kos:

(1) Selagi penyelia mengambil tanggungjawab untuk tindakan pembantu
C penyelia di bawahnya dan selagi beliau melaksanakannya untuk faedah pekerja-pekerja, beliau mesti tertakluk di bawah perenggan 2(3) kepada Jadual Pertama Akta tersebut. Perkataan 'dalam dan selama pelaksanaan tugasan mereka' tidak boleh dihadkan untuk merujuk kepada pelaksanaan tugasan sahaja (lihat perenggan 15).

D (2) Tugasan-tugasan seperti meluluskan permohonan cuti dan menghadiri mesyuarat-mesyuarat tidak bererti bahawa beliau tidak mempunyai pengawasan terhadap pekerja-pekerja oleh sebab dialah pada hakikatnya orang yang bertanggungjawab (lihat perenggan 16).

E (3) Oleh kerana syarikat telah meluluskan dan membenarkan pengadu membuat tugasan lain yang berkaitan untuk kepentingannya sendiri, dan mengetahui bahawa terdapat pembantu-pembantu penyelia, ianya tidak dapat diterima bagi syarikat responden untuk menafikan bahawa pengadu tergolong di bawah perenggan 2(3) kepada Jadual Pertama Akta tersebut (lihat perenggan 17).]

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Notes

For cases on termination benefits, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1055–1066.

G For cases on terms and conditions, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1180–1183.

Case referred to

Colgate Palmolive (M) Sdn Bhd v Cheong Foo Weng & 12 Ors [2001] MLJU 719;
H [2002] 2 AMR 2107 (refd)

Legislation referred to

Employment Act 1955 s 2(1), 69(1), 69(1)(a), 69B(1), paras 2(1), 2(3) of First Schedule

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Pravin Kaur Jessy (Jessy & Assoc) for the defendant.
Siva Subramaniam Shanmugam (Subramaniam Shanmugam & Assoc) for the plaintiff.

Kamalanathan Ratnam J:

FACTS

[1] This is a claim by the complainant for termination benefits amounting to RM24,864 for being employed by the defendant/respondent for 27 years. At the commencement of this appeal parties informed the court that there is no dispute as to the sum.

FINDINGS OF THE COURT

[2] The labour court dismissed the complainant's claim on the basis that she did not fall within the category of a manual worker as defined under para 2(1) of the First Schedule to the Employment Act 1955 ('the Act'). When she was terminated she was employed as a supervisor with a monthly salary of RM1,950.

[3] Counsel for the complainant argued that by virtue of her position as a senior production supervisor, the labour court did not have the jurisdiction to hear the matter under s 69(1) of the Act.

[4] The complainant filed her case under s 69(1)(a) of the Act but the presiding officer found that the case was under s 69B(1) of the Act.

[5] Section 69(1)(a) of the Act reads as follows:

> (1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under:
>
> (a) any term of the contract of service between such employee and his employer;

[6] Section 69B(1) of the Act reads as follows:

> (1) Notwithstanding the provisions of this Act, the powers of the Director General under section 69(1)(a) shall extend to employees whose wages per month exceed 1,500 Ringgit but does not exceed 5,000 Ringgit.

[7] It would seem that there is no dispute as to which section the case fell under since the complainant's last drawn salary was indeed RM1,900 per month. However the presiding officer decided that the complainant was not a manual worker under para 2(1) of the First Schedule to the Act. The said paragraph reads as follows:

> 2 Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which:
>
> (1) he is engaged in manual labour including such labour as an artisan or apprentice:
>
> Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity such person shall not be deemed to be

A performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one-half of the total time during which he is required to work in such wage period;

[8] The presiding officer also held that the complainant did not fall under para 2(3) of the First Schedule to the Act. The said sub-section reads as follows:

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(3) He supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work.

[9] She thus concluded because of the operative words 'throughout the performance of their work'. Holding that the complainant was a senior supervisor C at the respondent's company, the presiding officer held that to fall under para 2(3), the complainant must show that she was supervising and was overseeing other employees engaged in manual labour, throughout the performance of their work.

D **[10]** Counsel for the respondent pointed out that the complainant cannot fall under para 2(3) because admittedly from her own evidence it was clear that she had one assistant supervisor, two line leaders and an operator under her. In other words she was at the top of the chain of command so to speak.

[11] Besides she also admitted that other than supervising and at times E teaching the manual workers, she also had to approve their leave. When the machine could not function she would repair it. She helped out during emergencies. At times she even attended meetings. It was argued by the respondent that because of these various jobs performed by her, she could not be said to be engaged throughout the performance of their work.

F **[12]** I am aware of the decision of the High Court in *Colgate Palmolive (M) Sdn Bhd v Cheong Foo Weng & 12 Ors* [2002] 2 AMR 2107 where the court at p 2138 gave a strict interpretation to the words 'supervises … employees … throughout the performance of their works'. The court held that the supervisor 'must be physically present at all times when the work is done'.

G **[13]** I do not think that such a restrictive interpretation ought to be given. If that be the case the supervisor cannot even strictly speaking attend to the call of nature. He must be physically present at all times.

[14] In any case when asked during cross-examination whether the supervisor H '*beri arahan setiap hari*' the complainant's answer was '*setelah supervisor beritahu tentang kerja dia tidak lagi beri arahan tetapi dia berada di situ setiap hari. Supervisor juga buat planning*'. In other words she confirmed that the supervisor would be there supervising everyday and there was no further challenge on this by the respondent's solicitors.

I **[15]** It must be remembered that the Act was passed in 1955 when the worker population was more manual-labour orientated, and needed constant supervision. Machines were also such that only a supervisor could attend when

it broke down, so that his constant and vigilant attendance was necessary to keep the machines running and productivity continuous. It was with this in mind that there was a need to ensure continuous and constant supervision. Today machines are more sophisticated and supervisors have assistants to help them to relieve them of their work load. It must also be remembered that production today is many times more than what it was in the 1950s. If one supervisor is to manage alone, he would be more of a liability to the company than when he is assisted by others in the supervision. It is therefore my judgment that so long as the supervisor takes responsibility for the act of his assistant supervisors down the line and so long as he performs for the benefit of the workers, he must fall within para 2(3) of the First Schedule to the Act. I cannot see his approval of the workers leave as being outside the supervisory job. I agree that that supervision is unrelated to the supervision of the worker at the job. To my mind the words 'in and throughout the performance of their work' cannot be restricted to refer only to the work performance. Surely the supervisor is also entitled to see that the leave applied for by the manual worker does not fall during the time when the worker is needed most. The company might have to boost production during emergencies and the supervisor must be in a position to approve or disapprove of an applicant's leave. Surely it cannot be said that this does not fall within the Act envisaged in para 2(3) of the First Schedule to the Act.

[16] He might need to attend meetings for the benefit of the workers and at such times his assistant will stand in for him. Surely because of this it cannot be said that he has no supervision over the workers. He is after all, the person, over all in charge.

[17] Law must develop and move with the times. It cannot be static or immutable. The complainant had said under cross-examination that once instructions are given daily there was no need to give further instructions. However in any event the supervisor would be present daily. Taking this evidence with the fact that the company itself had approved and allowed the complainant to do other related work for its own benefit, and knowing that there were assistant supervisors down the line, it is unacceptable for the respondent company to deny that the complainant fell within para 2(3) to the First Schedule to the Act. I therefore allow the appeal with costs.

Appeal allowed.

Reported by Loo Lai Mee